IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT APPEAL No.71 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 18/11/2004 in W.P.No.3803 OF 2004 on the file of the High Court.)

Between:

1 The Registrar, NTR University of Health Sciences,

Andhra Pradesh at Vijayawada.
2 The Selection Committee constituted by the NTR

University of Health Sciences, Vijayawada.

..... APPELLANTS

AND

1 Dr. A. Krishna Veni, D/o Dr. A. Subboth kumar,
Mobile Unit, Social & Preventive Medicine Department,

Gandhi Medical College, Hyderabad.
2 Dr.Murali,
Jhanampet Primary Health Centre, Mahaboobnagar District.

.....RESPONDENTS

Counsel for the Appellant: Dr. Y.PADMAVATHI

Counsel for Respondent No.1: Mr. S.SATYANARAYANA PRASAD

Counsel for the Respondent No.2: None appeared

The Court made the following :

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JUDGMENT: (Per **C.V. RAMULU,J**)

This writ appeal is filed by respondents 1 and 2 in W.P.No.3803 of 2004 being aggrieved by the Judgment of the learned single Judge dated 18-11-2004 rendered therein.

For convenience sake, the parties are hereinafter referred to as arrayed in the writ petition.

The writ petitioner is a Medical Graduate appeared for the Post-Graduate Medical Entrance Test-2003 held on 31-12-2003 as an inservice candidate. She belongs to B.C.'D' category and in the entrance test she obtained Rank No.628. She appeared for the counselling and in the first selection she was admitted to Diploma course (DGO) at Kurnool Medical College as a local candidate of Sri Venkateswara University (SVU) local area. In the same first counselling, a Backward Class candidate with Rank No.262 belonging to Andhra University (AU) local area was admitted in M.D. (Anaesthesia) in the unreserved (non-local) seat as a service candidate in Osmania Medical College. The candidate with Rank No.21 was also admitted in OC unreserved seat in Osmania Medical College. Thus, during the first selections, 15 seats in Osmania University local area were filled up, out of which 2 seats were unreserved and both the seats were allotted to AU local area candidates, who were treated as non-local candidates in relation to OU local area. Respondents 1 and 2 were again called for selections on 14-2-2004 insofar as seats that fell vacant. It may be noted that candidates with Rank Nos.21, 252 and 262, who were selected in unreserved seats as well as OC local seats, did not join the course. The writ petitioner stated that on 27-2-2004 in the selections held for filling up resultant vacancy when her turn came, she was called when one seat in M.D. (Anaesthesia)

vacated by B.C.'D' service non-local candidate was available. Though she opted for the said seat, she was not admitted, but the seat was given to the 3rd respondent (2nd respondent herein), who is B.C.'D' service local candidate in relation to OU local area. Challenging the said action of respondents 1 and 2, the writ petition was filed seeking a direction to respondents 1 and 2 to admit her in M.D. (Anaesthesia) for the academic year 2003-04.

Respondents 1 and 2 filed a detailed counter affidavit wherein it is stated that the 2 unreserved seats were obtained by the candidates with Rank Nos.114 and 331, who were more meritorious than the writ petitioner and, therefore, the rules have not been contravened. It is further stated that in the first selections for the M.D. (Anaesthesia) in OU local area, candidates with Rank Nos.21, 252 and 262 did join the course; therefore, the second selections were held, in which the unofficial respondent (3rd respondent in the writ petition) was selected. It was the case of the University that when the selections are conducted, the University is bound to implement the Presidential Order and in the process, local area reservation prevails over other reservations and, therefore, at the time of second selections, the higher ranking candidates were selected for filling up unreserved seats. The learned single Judge after considering the various provisions of the Presidential Order held that Regulation (iii) of the Regulations governing allotment of seats to various categories and service candidates contained in the Prospectus of the University and Rule 10(vi) of the A.P. Medical Colleges (Admission into Post Graduate Medical Courses) Rules,1997 do not leave any doubt that the resultant vacancies shall be filled by the candidates belonging to the same category as those vacated in the corresponding seat. In simple terms, it only means that if an OU local candidate belonging to OC category vacates the seat, in the second selections, such seat has to be filled up only by OU local OC candidate duly considering all the candidates, who obtained ranks below the candidate, who vacated the seat. However, in the case on hand, the candidate with Rank No.262, who was admitted in the first counselling is B.C.'D' service/non-local (unreserved candidate) and, therefore, as per Rule 10(vi) of the Rules read with Regulation (iii) of the Regulations, the 2nd respondent was bound to earmark that seat to be filled up with only B.C.'D' service non-local candidate. Further, it was held that insofar as OU local area is concerned, the candidates belonging to SVU local area, AU local area are non-local candidates and the writ petitioner being a candidate belonging to SVU local area is non-local candidate in

relation to OU local area and hence, she has to be considered to fill up the seat vacated by the candidate with Rank No.262 along with other similar service non-local candidates. As such, a direction was given to consider the case of the writ petitioner in the light of the Judgment and if she is the next highest ranking candidate, after the candidate with Rank No.262, she shall have to be admitted into I year M.D. (Anaesthesia) course, if necessary, by cancelling the admission given to the 3rd respondent.

Learned counsel for the appellants strenuously contended that the admissions under challenge relate to M.D. (Anaesthesia) course in OU area where out of 15 seats available, 13 seats are required to be reserved in favour of the local candidates. 15% of the total seats are also reserved in favour of 'inservice' candidates and after 15 seats in M.D. (Anaesthesia) in Osmania University area were filled up in the first round of selection, 5 of the said seats fell vacant on the candidates below mentioned vacating their seats.

S.No.	Rank	Category	Local/Unreserved
1	21	OC	UR
2	149	OC	LOCAL
3	163	OC	LOCAL
4	252	OC	LOCAL
5	262	BC (D)	UNRESERVED (SERVICE

He further stated that since 3 out of 13 had vacated their seats, in the second round of selection from among these 5 vacant seats at least 3 had to be filled up by local candidates and thus 5 seats were to be filled up in order of merit. The seat vacated by Rank No.21 OC (unreserved) candidate was filled up by Rank No.114 OC unreserved candidate. The seat vacated by Rank No.149 OC local candidate was filled up by Rank No.204 OC local candidate. The seat vacated by Rank No.163 OC local candidate was filled up by Rank No.242 OC local candidate. Based on the Presidential Order, the State Government issued G.O.(P)No.646, Education, dated 10-7-1979. In the Annexure-III to the said G.O., the Government laid down the procedure for implementation of the reservation in favour of local candidates provided under the Presidential Order and other Non-Statewide Universities and Educational Institutions, which are subject to the control of the State Government. The procedure adopted by the University of Health Sciences by following the G.O.

(P)No.646, Education, dated 10-7-1979 in making admissions to the Post Graduate Medical courses was approved by this Court in W.P.No.23107 of 2002, dated 6-1-2004. Regulation 10 of the Regulations for admission to Post Graduate Medical Courses in the Medical Colleges affiliated to the NTR University of Health Sciences, Andhra Pradesh for the year 2003 reads as under:

> "**10. Selections:-** (i) Provisional selection shall be made by the Selection Committee constituted by the University of Health Sciences subject to these rules.
>
> (ii) The University of Health Sciences will announce the dates and center or centers at which selections will be made.
>
> (iii) The selection committee shall display the charts showing the allocation of seats to Scheduled Castes, Scheduled Tribes and Backward Classes in the Medical Colleges of the University area, local area wise at the time of selections.
>
> (iv) On the dates notified the candidates shall be called in order of merit by the selection committees and ask them to opt for subject of the candidates choice in the then available subjects in the college. The selection committee will issue the selection order immediately. The selection will be made only from among the candidates who physically present themselves when their hall ticket numbers are called out in order of merit.
>
> (v) (a) Claims of the candidates will not be considered if they are absent when called at the time of selection and the next in the merit would be selected. The selected candidate shall submit the original certificates to the selection committee and pay fees immediately at the counters available at the center.
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> The candidates shall submit required bond on or before the date fixed for the same.
>
> (b) If a candidate after choosing the subject fails to pay the fees or after paying the fees fails to submit the bond the selection of such candidate stands cancelled automatically.
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> © The candidates shall be called to appear before the selection committee one after the other and they shall not enter the selection committee room in groups.
>
> (d) Any person who obstructs the proceedings of the selection committee or otherwise misbehaves or causes disturbance at the selection committee meetings and obstructs or causes obstruction to its peaceful functioning shall be liable for such disciplinary action as may be taken by the University.
>
> (e) Candidates shall be present till the end of the selections and be available in case if they are recalled for any reasons.
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> N.B.:- (a) the procedure envisaged in G.O.Ms.No.996, E & S.W. Department, dt.11-11-75 will be followed in selecting the candidates.
>
> (b) Procedure indicated in Annexure-III to G.O.P.No.646, Education, dt.10-07-79 shall be followed in selecting the local candidates.
>
> **(vi) (a) Vacancies after the 1st selection shall be displayed on the date**

notified in all the Medical Colleges. These vacancies shall be filled by the Selection Committee on the dates at the centers to be notified by the University as per merit, subject to these rules.

(b) Resultant vacancies will be open to all the candidates with ranks below the rank of the candidate who vacated the seat for that speciality, in that area and also those candidates who were absent in the earlier selections. (emphasis supplied)

(c).....

(vii).....”

Rule 10 of the A.P. Educational Institutions (Regulation of Admission) Order,1974, which is relevant, reads as under:

> “10. The Government have carefully considered the manner of implementation of reservation in favour of local candidates provided in the Presidential Order taking into account the provisions made in respect of reservation in favour of Scheduled Castes, Scheduled Tribes, Backward Classes, Women etc., in the State and have directed that the procedure set out in the two annexures should be followed in the implementation of the reservations in favour of local candidates provided under the Order. Annexure-III to this Government will regulate admission to non-Statewide Universities and non-Statewide Educational Institutions subject to the control of the State Government, while Annexure-IV will regulate admissions State-wide Universities and State-wide Educational Institutions. The Registrars of Universities in the State, the Director of Public Instruction, Director of Technical Education, Director of Medical and Health Services, Director of Indian Medicine and the Director of Employment and Training are requested to issue suitable instructions to all the educational institutions under their control to follow the procedure laid down in Annexure-III and IV in the matter of admission of local candidates in pursuance of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order,1974.”

Clause (5) of Annexure-III of the said Order, which is also relevant, reads as follows:

> “5. If, however, on the scrutiny referred to in para 4, it is found that the number of local candidates finding a place in the said provisional admission list falls short of the number of seats reserved in favour of local candidates, the local candidates not included in the provisional admission list shall be arranged in order of merit in a separate list referred to as Remainder List. Thereafter, the candidates other than local candidates (referred to as ‘non-local’ candidates) finding a place in the provisional admission list shall be successively eliminated in reverse order from the bottom of such list and replaced by local candidates selected in order of merit from the Remainder List, so, however, that the provisions in the Rules of Admission for reservation in favour of Scheduled Castes, Scheduled Tribes, Backward Classes, Women etc., are observed to the extent that they are not inconsistent with the provisions of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order,1974. This process of successive elimination of non-local candidates and their

replacement by local candidates shall be continued until the number of local candidates in the provisional admission list equals the number of seats reserved for such candidates. At that stage, the provisional admission list as so modified shall be deemed to be the final admission list."

Therefore, the respondents have scrupulously followed the procedure and the following statement would make the things clear.

SEATS VACATED AFTER 1ST ROUND OF COUNSELLING

S.No.	Rank	Name	Category	Local/Unreserved
1	21	A.Srimannnarayana	OC	UR
2	149	R. Siddhartha	OC	LOCAL
3	163	K. Swapna	OC	LOCAL
4	252	B. Deepak	OC	LOCAL
5	262	M.V.A.Lakshmi	B.C.(D)	UR (SERVICE)

FILLED UP BY CANDIDATES IN THE 2ND ROUND OF COUNSELLING

S.No.	Rank	Name	Category	Local/Unreserved
1	114	B.Sanjay Solomon Raj	OC	UR
2	204	Ch.Suresh Reddy	OC	LOCAL
3	242	K. Sunitha	OC	LOCAL
4	331	B.J.Kavita Kumari	OC	UR
5	795	A.Muralidhar	BC (D)	LOCAL (SERVICE)

From the above, the only question that falls for consideration is whether the respondent-University (appellant herein) had strictly followed the Presidential Order and the Instructions issued thereunder in filling up the resultant vacancies after the first provisional selection.

As seen from the above, since among the 5 vacancies fallen, one was unreserved for OC and another was unreseved for BC 'D' candidate. But, nonetheless, as per the procedure prescribed by the Rules, the local candidates not included in the provisional admission list shall be arranged in order of merit in a separate list referred to as 'remainder list'. Thereafter, the candidates other than local candidates referred to as non-local candidates finding a place in the provisional admission list

shall be successively eliminated in reverse order from the bottom of such list and replace by local candidates selected in order of merit from the remainder list by following the reservation in favour of Scheduled Castes, Scheduled Tribes, Backward Classes, Women etc. As seen from the above statement, the University has followed the method scrupulously to allot 85% of the seats to the local candidates as a whole. Therefore, while following the successive elimination system in reverse order from the bottom of the non-local candidates, the seat which is aspired by the petitioner i.e. B.C. 'D' Unreserved (Service) had been allotted to the 2nd respondent i.e. B.C. 'D' Local (service) candidate to see that 85% of seats are allotted to the local candidates. In that process, 2 OC/Non-locals were allotted with seats. A conjoint reading of Regulation 10 of the Regulations for admission to Post Graduate Medical Courses in the Medical Colleges affiliated to the NTR University of Health Sciences, Andhra Pradesh for the year 2003, Rule 10 of the Andhra Pradesh Educational Institutions (Regulation of Admission) Order,1974 and Clause (5) of Annexure-III of the said Order would make the above position crystal clear. Therefore, looking from any angle, the procedure followed by the University cannot be found fault with. Thus, no direction could have been given in the writ petition directing the University to consider the candidature of the writ petitioner in the seat vacated with Rank No.262 along with other similar service non-local candidates for OU area.

Accordingly, the writ appeal is allowed. The impugned order is set aside and W.P.No.3803 of 2004 is dismissed. No order as to costs.

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B.Sudershan Reddy, J

04-3-2005

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C.V.Ramulu, J

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DEPUTY REGISTRAR

To

1 The Registrar, NTR University of Health Sciences,

Andhra Pradesh at Vijayawada.

2 The Selection Committee constituted by the NTR

University of Health Sciences, Vijayawada.

3 Dr. A. Krishna Veni, D/o Dr. A. Subboth kumar,
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